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**NOT FOR PUBLICATION**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Steven W. Bluth,	)	No. CV-04-2684-PHX-SRB
	)	
Plaintiff,	)	<b>OPINION AND ORDER</b>
	)	
vs.	)	
	)	
	)	
Jack L. Johnson; International Health	)	
Management Associates, Inc.; and	)	
Illinois Corporation,	)	
	)	
Defendants.	)	
_____	)	

Pending before the Court is Defendants' Motion to Transfer Venue pursuant to 28 U.S.C. § 1404(a) from the District of Arizona to the Northern District of Illinois (Doc. 17). The Court now rules on the motion.

**I. BACKGROUND**

In January 1994, the Board of Directors of Defendant International Health Management Associates, Inc. ("IHMA") wrote and executed a contract at its Illinois office issuing Plaintiff Steven W. Bluth ("Bluth") rights to purchase 200 shares of IHMA stock at

1 \$1.00 per share or 20% ownership of IHMA. In June 1995, Plaintiff tendered a check for  
2 \$200.00 to Defendant Jack J. Johnson ("Johnson"), payable to IHMA, for the purchase of  
3 200 shares of IHMA stock. While Defendants held Plaintiff out as a 20% owner in name,  
4 IHMA never issued Plaintiff the 200 shares of IHMA stock.  
5

6 From 1993 until 1995, Plaintiff executed his duties as Treasurer and as a director of  
7 IHMA in Illinois. From 1997 until January 2004 he was a full-time employee. However,  
8 between 1996 and 2001, Plaintiff spent about half of his time in Illinois and the other half of  
9 the time in Arizona. In 2001, Plaintiff began working primarily out of his residence in  
10 Arizona.<sup>1</sup> While executing his employment duties in both states Plaintiff began working  
11 primarily out of his house in Arizona to save IHMA the expenses of maintaining an  
12 apartment in Illinois and weekly travel between states. One project Plaintiff worked on while  
13 he was in Illinois and Arizona involved a license for use of drug delivery technology to  
14 Cubist Pharmaceutical, Inc. ("Cubist"). The Cubist project yielded substantial profits for  
15 IHMA. After disagreements between Plaintiff and Johnson over Plaintiff's compensation on  
16 various projects, Plaintiff filed a complaint on November 29, 2004, in this Court alleging  
17 breach of contract, breach of duty of good faith and fair dealing, constructive trust, unjust  
18 enrichment, fraud/misrepresentation, oppression/breach of fiduciary duty, and refusal to  
19 provide equitable accounting of IHMA profits or allow Plaintiff to inspect the records of  
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26 <sup>1</sup> A factual dispute exists with regard to the reason for Plaintiff's change in work  
27 location to Arizona. While Johnson alleges that Plaintiff requested to work in Arizona,  
28 Plaintiff has produced evidence that this move was not voluntary on his part.

1 IHMA. On June 22, 2005, Defendants filed a motion to transfer venue from the District of  
2 Arizona to the Northern District of Illinois.

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4 **II. LEGAL STANDARDS AND ANALYSIS**

5 Pursuant to 28 U.S.C. §1404(a), “[f]or the convenience of parties and witnesses, in  
6 the interest of justice, a district court may transfer any civil action to any other district or  
7 division where it might have been brought.” Defendants have the burden of establishing this  
8 action should be transferred to the Northern District of Illinois. Moreover, Defendants must  
9 establish: (1) that the transferee district, the Northern District of Illinois, is one where the  
10 case might have been brought; and (2) that the convenience of parties and witnesses and the  
11 interest of justice favor transfer. *Hatch v. Reliance Inc. Co.*, 758 F.2d 409, 414 (9th Cir.  
12 1985). There are multiple factors the Court may consider to determine whether the second  
13 prong of §1404(a) has been satisfied:  
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16 (1) The location where the relevant agreements were negotiated and executed,  
17 (2) the state that is most familiar with the governing law, (3) the plaintiff’s  
18 choice of forum, (4) the respective parties’ contacts with the forum, (5) the  
19 contacts relating to the plaintiff’s cause of action in the chosen forum, (6) the  
20 differences in the costs of litigating in the two forums, (7) the availability of  
21 compulsory process to compel attendance of unwilling non-party witnesses,  
22 and (8) the ease of access to sources of proof.<sup>2</sup>  
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26 <sup>2</sup> The Court will discuss factors four and five in the same section, as their analysis is  
27 very similar. The Court will do the same with factors six and eight.  
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1 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). Furthermore, "recent  
2 public policy of the forum state, if any, is at least as significant a factor in the § 1404(a)  
3 balancing." *Id.* at 499.  
4

5 **A. Appropriate Venue**

6 There is no dispute that this action could have initially been brought in the Northern  
7 District of Illinois. Accordingly, the Court will proceed to the discussion of the second  
8 prong.  
9

10 **B. Convenience of Parties, Witnesses, and Interest of Justice**

11 **1. The Location Where Relevant Agreements Were Negotiated and**  
12 **Executed**  
13

14 The first factor looks to the location where relevant agreements were negotiated and  
15 executed. *Warfield v. Gardner*, 346 F. Supp. 2d 1034, 1044 (D. Ariz. 2004). Here, the  
16 contract in question was negotiated and signed by Defendants and Plaintiff in Illinois.  
17 Therefore, this factor favors transfer to Illinois.  
18

19 **2. Governing Law**

20 The second factor turns on which court is most familiar with the governing state law.  
21 While this action was filed in Arizona, that fact alone is not dispositive on the issue of which  
22 state's governing law applies. Where, as here, the events giving rise to the complaint  
23 occurred in more than one state, courts must apply choice of law principles to determine  
24 which state's governing law to apply. In Arizona, courts look to the principles set forth in  
25 the Restatement (Second) of Conflict of Laws to resolve choice of law questions. *Bates v.*  
26  
27  
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1 *Superior Court*, 749 P.2d 1367, 1369 (Ariz. 1988) (citations omitted); *Swanson v. Image*  
2 *Bank, Inc.*, 77 P.3d 439, 441 (Ariz. 2003). At this juncture, the Court need not determine  
3 how the choice of law analysis plays out, as even assuming that this action is governed by  
4 Illinois law (a fact that would weigh in favor of transferring venue), that fact will not affect  
5 the Court's ultimate determination on the issue of whether to transfer venue.  
6

### 7 **3. Plaintiff's Choice of Forum**

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9 A plaintiff's choice of forum is given substantial deference. *Holder Co. v. The Main*  
10 *St. Distrib., Inc.*, 1987 U.S. Dist. LEXIS 10345, at \*23 (D. Ariz. Jan. 16, 1987). "This is  
11 especially true where the forum plaintiff chose is not only his domicile but also has a  
12 significant connection with the subject matter of the case." *Id.* (citing *Pacific Car & Foundry*  
13 *Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968)).  
14

15 For example, in *Holder Co.*, the court denied the defendant's motion to change venue  
16 because the plaintiff "reside[d] in the District of Arizona and the District ha[d] a significant  
17 connection with the subject matter of the case." 1987 LEXIS 10345, at \*23.  
18

19 Like the plaintiff in *Holder Co.*, Plaintiff has demonstrated that the District of Arizona  
20 has a "significant connection with the subject matter of the case." 1987 LEXIS 10345, at \*23.  
21 Plaintiff worked for and helped to develop IHMA's business in Arizona. Also, while living  
22 in Arizona, Plaintiff was involved in the development of the Cubist project that yielded  
23 substantial profits for IHMA. While the Northern District of Illinois "may be an alternative  
24 forum, Plaintiff elected to sue the Defendants in Arizona." *Warfield*, 346 F. Supp. 2d at  
25 1044. The Court finds that because Plaintiff chose to sue in Arizona and the state has a  
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1 significant connection with the subject matter of the case, this factor weights against the  
 2 transfer of venue.

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 4 **4. Respective Parties' Contacts with Forum; Contacts Relating**  
 5 **Plaintiff's Cause of Action in Arizona**

6 These factors examine the extent of the parties' contact with either forum. *GNC*  
 7 *Franchising, Inc.*, 211 F.3d at 499. While Defendants' primary place of business is in the  
 8 State of Illinois, Defendants' connections to Arizona are significant. Defendants maintained  
 9 an office and transacted extensive business in Arizona. While Plaintiff has very strong ties  
 10 to Arizona, Plaintiff has minimal ties to Illinois. Plaintiff is a resident of Arizona and  
 11 transacted business in this state. Thus, because Defendants have significant ties to both  
 12 forums and Plaintiff only has strong ties to Arizona, this factor favors Arizona as the proper  
 13 forum.  
 14  
 15

16 **5. Differences in the Cost of Litigating in the Two Forums; Ease of**  
 17 **Access to Sources of Proof.**  
 18

19 A "court will not transfer venue where the transfer will merely shift inconvenience  
 20 from one party to the other." *Holder Co.*, 1987 LEXIS 10345, at \*23. In making the  
 21 determination of which forum is the most convenient, the Court takes into account several  
 22 considerations including the convenience to the witnesses, difficulty or ease of transferring  
 23 evidence, and the cost of litigation.<sup>3</sup>  
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 26 <sup>3</sup> See also *Pacific Car*, 403 F.2d at 953 (noting the transfer of records and documents  
 27 may play a role in this analysis); *Fireman's Fund Ins. Co v. Nat'l Bank for Coops.*, 1993 WL  
 28 341274, \*4 (N.D. Cal. 1993) (holding that "[t]he movant must make more than mere

1 Here, Defendants have not shown that the cost of litigation would be less if the venue  
2 were transferred to the Northern District of Illinois. Rather, it appears as if the  
3 inconvenience and cost of litigation, travel, and shipping of documents would merely be  
4 shifted from one party to another. *See Pacific Car*, 403 F.2d at 953 (affirming transfer of  
5 venue where a ruling otherwise would have required the shipment of up to one thousand file  
6 drawers of records). In addition, Johnson has already obtained counsel in Arizona, thus  
7 helping to mitigate the adverse effects of litigating in this forum.  
8  
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10 The convenience of witnesses is a significant factor and "perhaps the critical factor  
11 for a court considering a motion to change venue." *Holder Co.*, 1987 LEXIS 10345, at \*24.  
12 "The Court must consider the effect of transfer on the availability of certain witnesses and  
13 their live testimony at trial." *Id.* at \*23. Additionally, parties should "specify the key  
14 witnesses it planned to call and outline the scope of their testimony." *Id.*  
15

16 In *Holder Co.*, the court held that convenience of the parties and witnesses favored  
17 Plaintiff's choice of forum because:  
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19 [P]laintiffs submitted the affidavits of witnesses who could testify to the  
20 alleged trademark and copyright infringement. In these affidavits, the  
21 witnesses testified to the inconvenience of testifying in New York. These  
22 witnesses reside in Arizona and would be beyond the Eastern District of New  
23 York's subpoena power under *Fed. R. Civ. P. 45(e)*. In contrast, [the  
24 defendant] submitted only the affidavit of its president regarding the  
25 inconvenience of appearing in Arizona. It failed to specify the key witnesses  
26 it planned to call and outline the scope of their testimony.

27 \_\_\_\_\_  
28 generalized allegations that there are many important documents in his preferred forum; he  
must, at least, explain what these documents are and why they are necessary to the  
determination of the issues in this case").

1 *Id.* at \*24-25.

2 Neither party has provided an affidavit of witnesses who could "testif[y] to the  
3 inconvenience of testifying" in either venue, but based on the evidence the Court does have  
4 before it, it is clear that the inconvenience would be shared equally by both parties.  
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6 In reaching this conclusion, the Court took into consideration the health of Johnson's  
7 daughter. While the Court recognizes the difficulty of Johnson leaving his daughter to testify  
8 should this case go to trial, this fact alone is insufficient to tip the balance of inconvenience  
9 in Defendants' favor.  
10

11 **6. The Availability of Compulsory Process to Compel Attendance**  
12 **of Unwilling Non-Party Witnesses**  
13

14 Whenever possible, a court should facilitate the "live" presence of material nonparty  
15 witnesses. *Kendall U.S.A., Inc. v. Dayton Steele Rule & Die Co.*, 666 F. Supp. 1264, 1264  
16 (N.D. Ind. 1987). A defendant must show that transferring venue would "appreciably expand  
17 the pool of potential witnesses." *Ashmore v. Northeastern Petroleum Div. of Cargill, Inc.*,  
18 925 F. Supp. 36, 39 (D. Me. 1996). In addition, "[a] defendant's motion to transfer under  
19 section 1404(a) may be denied when the witnesses are employees of the defendant and their  
20 presence can be obtained by the party." *Id.* at 38. Finally, an Arizona nonparty witnesses  
21 could not be compelled to testify if this case were transferred to the Northern District of  
22 Illinois. Fed. R. Civ. P. 45(e) (providing that a nonparty cannot be compelled to attend trial  
23 unless served within the district or 100 miles of the place of trial).  
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1 Here, Defendants have presented evidence that their key nonparty witnesses could not  
2 be compelled to testify in Arizona. However, Defendants have failed to demonstrate that the  
3 transfer of the case from the District of Arizona to the Northern District of Illinois would  
4 significantly expand their witness pool or increase their access to evidence.<sup>4</sup> While Plaintiff's  
5 witness pool would not be seriously affected by a change in venue, an important witness for  
6 Plaintiff could not be compelled to testify in the Northern District of Illinois. Therefore, the  
7 Court finds that this factor favors retaining venue in Arizona.  
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### 10 7. State's Interest

11 "[T]he relevant public policy of the forum state, if any, is at least as significant a  
12 factor in the § 1404(a) balancing." *GNC Franchising*, 211 F.3d at 495. Because Arizona has  
13 a public policy to provide a protective forum for its residents, this factor favors Arizona as  
14 the proper forum. *See Brink v. First Credit Res.*, 57 F. Supp. 2d 848, 861 (D. Ariz. 1999)  
15 (holding that "[t]he state of Arizona maintains a strong interest in providing an effective  
16 means of redress for its residents").  
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### 20 III. CONCLUSION

21 After balancing the relevant factors, the Court finds that Defendants have failed to  
22 demonstrate that this case would be better litigated in the Northern District of Illinois than  
23 in the District of Arizona. Even though the contract in dispute was negotiated and executed  
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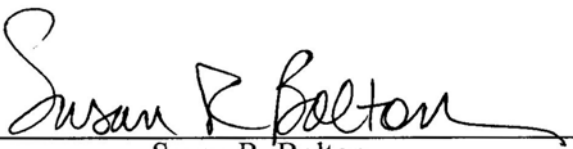
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26 <sup>4</sup> Defendants have identified three nonparty witnesses; one of which resides outside  
27 the 100 mile radius of Illinois jurisdiction. Fed. R. Civ. P. 45(e).  
28

1 in Illinois, and even though Illinois law may govern this action, these considerations are  
2 outweighed by the deference the Court must pay to Plaintiff's choice of forum, the strong  
3 connections shared by Plaintiff and Defendants to Arizona, the fact that many of the events  
4 giving rise to the Complaint occurred in Arizona, and the fact that Arizona has an interest in  
5 providing a judicial forum for its citizens. Also tipping the scales against a transfer of venue  
6 is Defendants' failure to show that such a transfer would lower the costs of litigation, reduce  
7 the inconvenience of witnesses, or improve access to sources of proof. As such, the Motion  
8 to Transfer Venue is denied.

11 **IT IS ORDERED** denying Defendants' Motion to Transfer Venue to the United  
12 States District Court, Northern District of Illinois (Doc. 17).

14 DATED this 17<sup>th</sup> day of October, 2005.

20  
21   
22 Susan R. Bolton  
23 United States District Judge